

1 2 3 4 5 6 7 8

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

2 STEVE F. TIBBETTS and  
TAMBERLYN TIBBETTS,

NO. 2:23-cv-00596-JAM-CKD

Plaintiffs,

V.

KELLER MORTGAGE, LLC, dba  
KELLER MORTGAGE, et al.,

ORDER DENYING PLAINTIFFS' MOTION  
FOR LEAVE TO FILE FOURTH AMENDED  
COMPLAINT

## Defendants.

## FACTUAL BACKGROUND

20 Before this Court is Steve and Tamberlyn Tibbetts'  
21 ("Plaintiffs") motion for leave to file a Fourth Amended  
22 Complaint. See Mot., ECF No. 65. Defendants filed an  
23 opposition. See Opp'n, ECF No. 67. Plaintiffs replied. See  
24 Reply, ECF No. 70.

25 Plaintiffs' Third Amended Complaint alleges four causes of  
26 action against Defendants stemming from a false report to a  
27 credit agency that Plaintiffs were delinquent on a loan, which  
28 resulted in deterioration of their creditworthiness. Plaintiffs

1 now seek to file a Fourth Amended Complaint to include new causes  
2 of action and additional factual evidence. For the reasons  
3 provided herein, the Court DENIES Plaintiffs' motion to amend.<sup>1</sup>

4

5 I. OPINION

6 1. Legal Standard

7 Federal Rule of Civil Procedure Rule 15 provides that a  
8 party may amend its complaint "once as a matter of course at any  
9 time before a responsive pleading is served." Fed. R. Civ. P.  
10 15(a). Thereafter, a party may amend only by leave of the court  
11 or by written consent of the adverse party. Id. Leave to amend  
12 is typically "granted unless amendment would cause prejudice to  
13 the opposing party, is sought in bad faith, is futile, or  
14 creates undue delay." Johnson v. Mammoth Recreations, Inc., 975  
15 F.2d 604, 607 (9th Cir. 1992); see also Foman v. Davis, 371 U.S.  
16 178, 182 (1962).

17 Additionally, once a pretrial scheduling order has been  
18 issued, the Court must also consider the "good cause" standard  
19 under Federal Rule of Civil Procedure 16. See Johnson, 975 F.2d  
20 604, 608 (9th Cir. 1992).

21 B. Analysis

22 1. Futility of the Pleadings

23 Courts are empowered to deny leave to amend based on the  
24 futility of the proposed amendment. See Novak v. United States,  
25 795 F.3d 1012, 1020 (9th Cir. 2015). Additionally, futility

26

---

27 <sup>1</sup>This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was  
scheduled for January 21, 2025.

1 alone can justify a court's refusal to grant leave to amend. See  
2 Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir.1995).

3 Defendants' primary argument in their opposition to this  
4 motion is that Plaintiffs' proposed amendments to their complaint  
5 would be futile. Defendants contend that the proposed new causes  
6 of action fail as a matter of law because they are preempted and  
7 no duty of care can be established. See Opp'n at 6-10. The  
8 Court agrees.

9 Defendants correctly point out that "state law negligence  
10 and defamation claims are preempted by the FCRA" as these claims  
11 fall "directly within provisions of the statute that prohibit  
12 furnishers of information from reporting inaccurate information."  
13 Buraye v. Equifax, 625 F.Supp.2d 894, 900-01 (C.D. Cal. 2008)  
14 (citing 15 U.S.C. § 1681t(b)(1)(F)); see also 15 U.S.C.  
15 § 1681h(e) ("no consumer may bring any action or proceeding in  
16 the nature of defamation, invasion of privacy, or negligence with  
17 respect to the reporting of information against . . . any person  
18 who furnishes information to a consumer reporting agency . . .  
19 except as to false information furnished with malice or willful  
20 intent to injure such consumer."). Here, Plaintiff's proposed  
21 First and Third Causes of action for negligence and defamation  
22 would squarely be preempted by federal statute.

23 Moreover, Plaintiffs' amended Second Cause of Action would  
24 similarly fail because Plaintiffs admit that they never contacted  
25 the credit reporting agencies, and as such, cannot sustain their  
26 newly alleged FCRA claims. See Opp'n at 6, Cheong Decl. ¶¶ 6-7.  
27 Courts in the Ninth Circuit have held that "[a] necessary  
28 predicate to the filing of a claim for violation of § 1681s-2(b)

1 is that the plaintiff must first notify the national credit  
2 reporting agencies of the dispute." Ruiz v. Central Mortgage  
3 Company, No. CV-14-08627-MMM-SSx, 2015 WL 12683873, at \*16 (C.D.  
4 Cal. Apr. 2, 2015); see also Roybal v. Equifax, 405 F.Supp.2d  
5 1177, 1180 (E.D. Cal. 2005) ("The furnisher's duty to  
6 investigate, however, does not arise unless it receives notice of  
7 the dispute from the CRAs directly.").

8 Notably, Plaintiffs fail to adequately address or respond to  
9 Defendants' arguments. Pursuant to the Order Regarding Filing  
10 Requirements, the Court cannot consider any arguments in  
11 Plaintiffs' reply brief which appear past the specified five page  
12 limit. See ECF No. 2-2. As a result, the court accepts the  
13 Defendants' arguments and finds that the newly proposed causes of  
14 action would be futile.

15 2. No Good Cause Has Been Shown

16 While Plaintiffs argue that they have not acted in bad  
17 faith, they do not proffer any demonstration of the good cause  
18 requisite to modify the existing scheduling order. In line with  
19 Rule 16, the Pretrial Scheduling Order issued in this case  
20 states that "[n]o further joinder of parties or amendments to  
21 pleadings is permitted except with leave of court, good cause  
22 having been shown.". ECF No. 48 at 2:2-4. Plaintiffs do not  
23 address Rule 16 in their motion for leave and the Court finds  
24 that vacating the upcoming deadlines already set for dispositive  
25 motions and the pretrial conference would cause Defendants  
26 prejudice and an undue delay.

27 Given that Plaintiffs' proposed amendments to their already  
28 operative Third Amended Complaint would be futile and no good

1 cause has been shown, the Court finds that Plaintiffs are unable  
2 to meet the standards for revision articulated in Rule 15 and  
3 Rule 16.

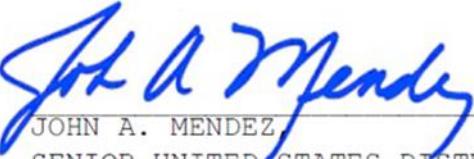
4

5 II. ORDER

6 For the reasons set forth above, the Court DENIES  
7 Plaintiffs' Motion for Leave to File a Fourth Amended Complaint.  
8 Additionally, the Court imposes a \$250 fee on Plaintiffs' counsel  
9 for violating the specified page limit for reply memoranda of  
10 law, pursuant to the Order Regarding Filing Requirements, ECF No.  
11 2-2. Plaintiffs' counsel shall pay this fee within ten days.

12 IT IS SO ORDERED.

13 Dated: February 6, 2025

14  
15   
16 JOHN A. MENDEZ  
17 SENIOR UNITED STATES DISTRICT JUDGE

18

19

20

21

22

23

24

25

26

27

28